

No credit shall be given the taxpayer unless the taxpayer shows that it has borne the burden of the tax or has unconditionally repaid the amount of the tax to the customer from whom it was collected. See 86 Ill. Adm. Code 130.1501. (This is a GIL).

March 17, 2000

Dear Xxxxx:

This letter is in response to your letter dated February 29, 2000. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

Our company, BUSINESS, has recently undergone an Illinois Department of Revenue Sales and Use Tax Audit. During the course of the audit, the Illinois Department of Revenue agreed that BUSINESS should be classified as a manufacturer; therefore, exempting all of the items purchased for the manufacturing machinery and equipment, including the replacement parts. Examples of the exempt items include replacement parts for the machines used for grinding and milling.

It was also discovered during the audit that BUSINESS had erroneously paid sales tax to vendors on equipment and replacement parts that are exempt. One particular vendor was the COMPANY. The sales tax auditor, PERSON, advised us to contact the respective vendors and request a refund directly from them for sales taxes paid on exempt equipment and materials. The vendors, in turn, will then file a ST-1-X to request a refund from the State of Illinois Department of Revenue.

BUSINESS sent the enclosed letter to COMPANY, along with a Form ST-1-X for their use, requesting a refund of overpaid sales tax. We have since contacted them several times and in response COMPANY informed us that they have neither obligation (nor intention) to pay because they thought we were not exempt at the time of the respective sales. Our contact at COMPANY has been as follows:

NAME/ADDRESS

Can you please explain what recourse BUSINESS has in this situation and provide BUSINESS with any documentation, which may help us settle this issue between BUSINESS and COMPANY?

March 17, 2000

Your assistance in this matter will be greatly appreciated.

If a taxpayer pays an amount of tax under the Retailers' Occupation Tax Act that is not due, either as a result of a mistake of fact or an error of law, the taxpayer may file a claim for credit with the Department. Only the persons remitting tax to the Department are authorized to file such claims. No credit shall be given the taxpayer unless the taxpayer shows that it has borne the burden of the tax or has unconditionally repaid the amount of the tax to the customer from whom it was collected. See the enclosed copy of 86 Ill. Adm. Code 130.1501. The claims for credit must be prepared and filed upon forms provided by the Department containing the information listed in Section 130.1501(b).

Under Illinois sales tax laws, retailers are not required to file claims for credit. Further, the Department has no authority to compel sellers to file a claim for credit. Whether or not sellers refund the taxes paid and file claims for credit with the Department is a private matter between sellers and purchasers.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis
Associate Counsel

MAJ:msk

Enc.